

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

EAGLE TRIBUNE PUBLISHING COMPANY

Employer

and

THE NEWSPAPER GUILD OF GREATER
BOSTON, TNG-CWA, NO. 31032

Petitioner

Case 1-RC-21963

[\[1\]](#)

DECISION AND DIRECTION OF ELECTION

This case concerns the appropriateness of a petitioned-for unit of editorial department employees in the newspaper industry. The Union seeks a unit of editorial department employees employed by the Employer, the Eagle Tribune Publishing Company, at its various locations in

[\[2\]](#)

Massachusetts and Southern New Hampshire. The Employer asserts that the smallest

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appropriate unit must include its unrepresented nonsupervisory employees in all departments, excluding drivers and mailers. The other departments that the Employer seeks to include are finance, advertising, circulation, operations, plant facilities, business systems, and marketing and

[\[4\]](#)

promotions. I find that the petitioned-for unit of editorial department employees is appropriate.

The parties also dispute the status of an administrative assistant in the editorial department, whom the Employer would exclude from the unit as a confidential employee. I find

that this individual is not a confidential employee and I will include her in the unit found appropriate.

APPROPRIATE UNIT

FACTS

Overview

The Employer publishes ten newspapers that serve towns in various markets in the Merrimack Valley area north of Boston, Massachusetts, and in southern New Hampshire. Four of the newspapers, the Eagle Tribune, Salem News, Daily News of Newburyport, and Gloucester Daily Times, are published daily. Six of the newspapers, the Andover Townsman, Haverhill Gazette, Derry News, Carriage Towne News, Town Crossings, and The Weekender, are published weekly or twice-weekly. The Weekender, Carriage Towne News, and Town Crossings are free publications, while the others are paid for by subscribers.

The Employer has two facilities located in North Andover, Massachusetts. The main facility, which includes the Employer's headquarters, is located at 100 Turnpike Street in North Andover. This facility houses the Employer's executives and the largest contingent of employees in all departments, including those editorial department employees whose work is dedicated

[\[5\]](#)

primarily to the Eagle Tribune newspaper. The second facility, located on Johnson Street in North Andover, houses the Employer's internet division. Six of the Employer's ten publications are edited and prepared for publication at the North Andover locations and all ten are physically printed and distributed from the main North Andover facility.

The Employer has several satellite facilities that house employees of its other nine newspapers. The Salem News is based at a facility in Beverly, Massachusetts. The Daily News of Newburyport has a facility in Newburyport, Massachusetts. The Gloucester Daily Times is based in Gloucester, Massachusetts. The Andover Townsman and Town Crossing publications are based at a facility in Andover, Massachusetts. The Haverhill Gazette is based in Haverhill, Massachusetts. The Derry News and the Weekender are based in Derry, New Hampshire. Finally, the Carriage Towne News has a facility in Kingston, New Hampshire.

Richard Franks is the publisher and president of the Employer. Vice President for News/Editor in Chief William Ketter and Executive Editor Karen Andreas report to Franks. Also reporting to Franks are the vice president for finance/cfo, vice president for advertising, vice president for circulation, vice president for operations, vice president for plant facilities, vice president for business systems, vice president for marketing and promotions, vice president for

weekly papers, vice president/general manager for the Essex County News, and vice president for
[\[6\]](#)
 human resources.

Editorial Department

The petitioned-for employees in the editorial department include 145 reporters, sports reporters, features reporters, photographers, editorial assistants, copy editors, paginators, copy editor/paginatores, copy desk clerks, page designers, and graphics designers who work for the Employer's ten publications. They all report to various editors in the editorial department who

[\[7\]](#)
 report, ultimately, to Executive Editor Andreas. Depending on their position, Andreas is the second, third, or fourth level supervisor of the editorial department employees.

Reporters gather and verify information for news stories through interviews, observations,

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 and research. They must have the ability to write clearly and concisely on deadline. They must have a bachelor's degree in journalism or a related field and one to three years of experience writing for a daily or weekly publication. Editorial assistants generally compile community news

[\[9\]](#)
 such as calendar items, news briefs, births, and weddings. They are required to have a bachelor's degree in journalism or a related field. Photographers take photos for sports, business, features, and general news stories. They are required to have their own digital camera gear and must have one year of experience with digital photography in a newspaper setting as well as knowledge of Macintosh computer systems.

Most of the copy editors and paginators work at the "central desk" in the main North Andover facility, also referred to as the "copy desk," whose employees do all the editing work for

[\[10\]](#)
 the four daily newspapers, as well as for the Derry News and the Weekender. Copy editors receive stories electronically and edit them for grammar, spelling, punctuation, and syntax. They verify facts, dates, and statistics using standard reference sources and proof pages before they are sent for publication. They are required to have a bachelor's degree in journalism or a related field

[\[11\]](#)
 and a working knowledge of Quark Express computer software and the Macintosh paginating system. Paginators design the layout of the newspaper page. They are required to have a working knowledge of Quark Express, Photoshop, and Illustrator desktop publishing software and one to three years of experience.

Graphic designers design pages, illustrate photos, and create graphics. They are required

to have experience with Quark Express, Freehand, and Photoshop software, one to three years of experience at a daily newspaper, and a bachelor's degree in design.

The editorial department employees are subject to and receive training in a code of ethics for journalists. Those who work at the main North Andover facility work in a distinct area of the building reserved for the editorial department. The record does not reveal the schedules of the editorial department employees other than the fact that they may work throughout the evening. The central desk is a 24-hour operation, and the central desk personnel stay very late.

Advertising Department

The advertising department is responsible for selling ads for publication in the Employer's ten publications. This department employs sales consultants, inside sales consultants, outside sales consultants, sales assistants, obituary coordinators, a graphic artist, an executive assistant, and an administrative assistant. They report to various supervisors, managers, and directors who, in turn, report to Vice President for Advertising Dennis Wade, who [\[12\]](#) is their second or third level supervisor.

Twelve inside sales consultants work in the main North Andover facility, where they receive calls from customers who wish to place classified ads in any of the publications. Three obituary coordinators in North Andover help funeral directors write obituaries, the content of which consists of boilerplate. The obituaries are paid space. Two of the obituary coordinators formerly worked as writers for the editorial department.

Sales consultants and outside sales consultants work for various groups within the advertising department. The outside classified division sells ad space to auto dealers and real estate agencies, while the local advertising division sells to local advertisers, and the majors division sells to major accounts. The weekly division sells ads for the weekly newspapers. Sales consultants make in-person calls on clients. They are responsible for selling to established accounts and for developing new accounts. They are based both in North Andover and at the Employer's other locations. They are assigned a geographical territory or may be assigned to clients based on their knowledge of an industry or a relationship to a client. One of the sales consultants is a photographer who takes pictures of advertising clients for promotional purposes, [\[13\]](#)

which he turns in to the news room. As for qualifications, Wade testified that sales consultants must have a certain personality, but need not necessarily have sales experience.

Sales assistants enter advertising orders into a computer system, clean up ad copy, tell the

client that a proof of their advertisement is available, and act as a facilitator between the advertising department and the production department. They must be proficient in Microsoft Word and Excel computer programs, and have excellent communication and analytical skills. A graphic artist who works in Beverly creates graphics for advertisements. Wade's executive assistant does reports, handles phone calls, coordinates the monthly sales meeting, acts as stenographer at the weekly sales director meetings, and handles some advertising from ad agencies that have national clients.

Operations Management Department

The operations management department, which is headed by Vice President of Operations Dennis Turmel, is responsible for the production of the newspapers. It consists of ad operations, an information technologies division, digital imaging, composing, the press department, and the [\[14\]](#) packaging center.

Ad operations is responsible for the production of paid advertisements. Its 23 rank and [\[15\]](#)

file employees report through various supervisors to the ad operations manager. All of them work in the main North Andover facility, with the exception of one position for an ad services clerk in Beverly that is currently vacant. Four ad services clerks receive orders from the sales assistants in the advertising department. They enter the orders into the computer as a booking record, which sets forth the date, size, and color of the ad. They work staggered hours from 7 a. m. to 7 p.m. and are required to have a high school diploma and clerical skills. Thirteen ad technicians and one ad technician/page designer use Quark Express software to build the ads electronically, send the ads to the customers for proofing, and rework them if necessary. They provide coverage 24 hours a day. Two proofreaders proofread the ads. The tear sheet clerk tears the ads out of the actual newspaper and forwards them to the accounting department to send to the customer with their bill as proof that their ad ran.

The ad operations group produces the Carriage Towne News, one of the Employer's free publications, from both the editorial and advertising standpoint. An ad technician/page designer for the Carriage Towne News does the pagination for press releases or other copy that has been submitted by community sources and also occasionally writes a headline.

Two product layout clerks produce the "dummies" for each page of the newspaper. They take the reservations for ad space, determine the size of the newspaper, and use a computer program to position each ad on a page. They interact with the press department regarding the availability of color and the breakdown of the paper. They send the dummies to the editorial department, so that its staff knows the size and placement of the "news hole" into which it will

place its news, and the availability of color. They work from 7 a.m. to 5 p.m. and are located in a separate area from the editorial department.

The information technology division has three groups: internet operations, research and development, and information technology services. The employees in each of the three groups

[16]

report to a director who, in turn, reports to Turmel. The internet division publishes websites for each of the ten publications that post on-line versions of the news stories. This group is housed in a separate facility on Johnson Street in North Andover, due to lack of space at the main North Andover location. A web developer/designer and web technician work from 8 a.m. to 5 p.m. The web developer creates web graphics and designs and lays out web pages. Turmel testified that the web developer and web technician must have a bachelor's degree in computer science or information technology. Two part-time web coordinators work five-hour shifts that are staggered to provide seven-day-a-week coverage. They take editorial copy and post it on the website, making sure it is ready to post by the deadline. The web coordinators must be familiar with desktop publishing tools such as Photoshop, Illustrator, and Quark Express, and have some formal education.

The research and development group employs a director and two programmers who develop software for various departments, including the advertising department and the packaging center. Director Matt Ouellette created the pagination system used by the copy editors in the editorial department. The programmers work from 8 a.m. to 6 p.m.

The information technology services group employs two systems technicians and three junior systems technicians who install computer servers and networks, and service the telephone system. They function as a help desk, assisting anyone in the company who has computer or phone problems. They assist the editorial department, which is given priority due to the nature of its function, more frequently than other departments. Four of them work in the North Andover facility and one works in Beverly. They generally work daytime hours and rotate being on call with a pager to answer calls for help.

The digital imaging group was formed three months ago and includes five digital imaging

[17]

operators. They work in a room located off the composing department and report to Composing Superintendent Jim Robson. They process preset ads that some customers submit electronically. They match the ads with an insertion order and make corrections. They use Photoshop software and are responsible for color management, which involves making tonal corrections for ads and for editorial pieces. They also do pagination for the classified ads for all of the publications, using Quark Express software. This is a 24-hour a day operation with second and third shifts. Turmel testified that a bachelor's degree in computer science or technology/

[\[18\]](#)

desktop publishing tools is preferred, but not required, for this position.

Circulation Department

Vice President for Circulation Steve Milone is responsible for circulation operations, sales

[\[19\]](#)

and marketing, and distribution, each of which has its own manager. Milone is the third or

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fourth level supervisor for the rank and file employees in this group.

The circulation operations group is responsible for delivering all ten publications to customers. Seventeen district sales managers each have a geographic territory in which they

[\[21\]](#)

oversee carriers who sell newspapers and collect payments from home delivery subscribers.

They are out in the field more than in the office and handle routes themselves in the absence of a carrier. They work from 9:30 a.m. to 6:30 p.m. and must work weekends. They are required to have a high school diploma and sales experience. Rack managers each maintain and collect money from about 200 vending machines. Single copy representatives each have about 170 accounts at retail outlets and vending machines. They work from 8 a.m. to 5 p.m., visiting 30 to 40 accounts per day and collecting money and newspapers from previous weeks. Rack managers and single copy representative must be sales-minded and do not need a degree.

The circulation sales and marketing group is responsible for customer service. Twelve customer service representatives and a receptionist are located in the North Andover facility. They work from 6 a.m. to 6:30 p.m. Monday through Friday, and from 6:30 a.m. to 1 p.m. on weekends. The customer service representatives handle billing inquiries from subscribers for all ten publications. Two retention representatives call customers to make sure their newspaper deliveries have stopped and restarted as requested. These jobs do not require a high school diploma and some of the incumbents are high school students. Eight telemarketers work in the solicitation room in the main North Andover facility selling subscriptions for all ten newspapers. They work from 10 a.m. to 7 p.m. or 11 a.m. to 8 p.m. Three part-time sales managers, referred to as "hawkers," promote the newspaper in events such as parades and oversee the delivery of

[\[22\]](#)

newspapers to hotels and hospitals.

Finance and Business Department

The finance and business department handles the Employer's budget, acquisitions, purchases, property leases, accounts receivable, accounts payable, and banking affairs. Vice

President for Finance and CFO Ronald Pollina and his staff work in the main North Andover facility. This group approves all major purchases, such as computer systems. Reporters and photographers in the editorial department submit claims for mileage and expenses to their department heads, and the claims are then forwarded to this department for approval. A switchboard employee and receptionists at the various sites are part of this department.

Marketing and Promotions Department

Daniel Griffin is the vice president for marketing and promotions. Franks testified that this department includes a research director, writers, research assistants or analysts, and clerks. An exhibit of job postings submitted into evidence includes a position in the marketing department with the title of “special sections/promotion associate.” Franks testified that employees in this department present Gallup poll data to the news rooms regarding the demographics of their audience. They arrange for marketing materials for circulation campaigns, such as gas cards. They also write “special sections” for the newspapers. These are sections of the newspaper that are intended to attract specific categories of advertisers because of their theme, such as a “back to school” guide. Finally, the marketing and promotions department promotes events sponsored by the Employer, such as debates by candidates in local elections. Reporters and editors from the editorial department moderate these events and serve on panels to ask questions of the candidates.

Business Systems

John Gregory is the vice president for business systems. This department manages the Employer’s computer systems for the business side of the organization, such as the systems for payroll, time entry, accounts payable, accounts receivable, and human resources. This department includes programmers, programmer analysts, and some supervisory positions.

Plant Facilities

The plant facilities department, which is headed by Vice President for Plant Facilities Dana Scholtz, is responsible for maintenance at all of the Employer’s buildings, including grounds maintenance, light carpentry, painting, minor repairs, and cabling for computers. This
[23]
department has four employees.

Work-Related Contact Between Editorial Department Employees and Employees in Other Departments

The central desk in the editorial department negotiates with the two product layout clerks from

[\[24\]](#)

the advertising operations group over the size of the news hole in each publication. In this regard, the product layout clerks send electronic and paper copies of the dummies to the editors and paginators at the central desk, who use them to determine where on each page to insert news stories and photographs. If the central desk wants extra space for a story or wants an advertisement to be moved due to a big story or photograph, its representatives walk over to the product layout clerks to make the request. Conversely, if the advertising department submits a late advertisement, the product layout clerk may have to negotiate with the central desk to give up some space. Turmel testified that proposals to enlarge the news hole come from editors, who are supervisors. Andreas testified that a staffer on the central desk would handle such a request in the absence of an editor, but she could not state the frequency with which this occurs.

[\[25\]](#)

Andreas testified that advertising representatives often receive press releases or other news tips from their clients, for example, a story about a new store opening, that they E-mail or give to the reporter who covers a particular beat. Milone testified that the district sales managers and home delivery managers in the circulation department have two-way radios with which they may call reporters about newsworthy stories, such as car accidents. Mostly, they contact Milone or someone else in the circulation department, who tells an editor or reporter about the news tip. The record does not reveal the frequency with which rank and file circulation department employees have contacted reporters directly with such news tips, nor were any specific examples of such contact given.

Andreas testified that circulation department “folks” often come to the news budget meeting in the editorial department, during which the editors and staffers decide which stories and photographs will go on the front page of the newspaper. The record does not reveal whether the circulation department “folks” are rank and file employees in the proposed bargaining unit.

[\[26\]](#)

Leslie Wilkinson, assistant to the vice president for circulation, prepares a daily headline report which is sent to various editors and managers, including those in the editorial department, to notify them which stories sold the most copies that week. Each day at 4 p.m., an editor on duty in the editorial department sends the “news budget,” a list of the stories to be published the following day, to the vice president for circulation and the other managers in the circulation department, so that the circulation department may identify stories that warrant putting extra copies in newsstands. If a customer cancels a subscription for editorial reasons or compliments the editorial department, the customer service representative in the circulation department prints out the customer information and gives it to the circulation department managers who, in turn, forward it to managers in the editorial department, so that an editor or someone designated by the editor may call the customer.

Andreas testified that Director of Internet Operations Brad Koltz and his staff talk to the central desk regarding news content for the website and that Koltz talks daily with a senior news editor in the editorial department, making corrections to copy and telling editors in the editorial [27]

department about errors. If copy editors in the editorial department discover an error that needs to be corrected, they contact someone from the web department. Andreas testified that this happens all the time.

Research and Development Director Matt Ouellette created the pagination system used by the copy editors and works with a design group in the editorial department regarding any changes to [28]

the system. Andreas testified that the “head programmer” from operations redesigned the editorial department computer system and worked with “graphics people” to input the fonts and set up the keys. Various managers and supervisors from operations, information technology, and the editorial department created a computer program that captures and catalogues news pictures.

Rank and file editorial department employees, like all employees, may request assistance from the systems technicians in the IT Service group regarding problems with their computers, printers, and phones. IT Services gives priority to the editorial department employees because of the nature of their job.

The marketing and promotions department interacts with the editorial department regarding “special sections” intended to sell ads to a particular clientele, such as a gardening section or back-to-school section or a Boston Red Sox section. Either the marketing department or the [29]

editorial department or both departments jointly prepare the content, e.g., stories on how to plant flowers for a gardening section. The central desk proofs and paginates the section. Andreas testified that the vice president for marketing and promotions may tell Andreas he wants to assign a reporter to write a story for a section and gave two instances in which he did so. An editor from the editorial department may E-mail or talk to someone in marketing about a big upcoming story, so that marketing can promote the story on “rack cards.” Andreas testified that she could not think of any interaction between rank and file editorial department employees and rank and file marketing and promotions employees.

The petitioned-for editorial department employees’ contact with some of the other departments is very limited. The only interaction that rank and file editorial department employees have with the finance department involves approval of their expense vouchers. If their vouchers are under a certain amount, editorial department employees may obtain the cash from a cashier. Andreas testified that the vice president for business systems or someone else in his department, she did not know who, designed a spread sheet for two reporters to use in connection with a story about

school test results. The business systems department created a time-keeping system and trained all employees to use it, but the record does not reveal whether it was rank and file employees from the business systems department who were involved.

Employees from all departments attend common events such as company picnics, Weight Watchers and yoga classes, and training events. The Employer has several ongoing and temporary committees and task forces with representatives from various departments. A safety committee includes every department in the company and is not confined to supervisors, although the record does not reveal which nonsupervisory employees participate or how often the committee meets. Andreas testified that a task force that considers competition includes five to six reporters and “advertising reps.” A visuals committee meets monthly to discuss the quality of the photography and color and printing problems. This committee includes photographers, supervisory personnel from the editorial department, and “people who work with color” from operations. The record does not reveal whether the operations representatives are rank and file employees.

[\[30\]](#)

Interchange

There is no evidence that any of the petitioned-for editorial department employees ever perform the work of non-editorial department employees on a temporary basis or vice versa. One employee, Paul Calzetta, performs work in two different departments. He is employed as a

[\[31\]](#)

receptionist by the accounting department, but physically sits in the editorial department where he does work for both the editorial department, such as verifying letters to the editor, and the accounting department.

The Employer presented evidence of seven permanent transfers between the editorial department and other departments. Only three of the transfers clearly involved transfers to and from bargaining unit positions. About nine months ago, the Employer transferred responsibility for writing obituaries from the editorial department to the advertising department. At that time, weekend reporter Ed Hudson and editorial assistant Matthew Joyce, who had both been writing

[\[32\]](#)

obituaries in the editorial department, were offered the obituary jobs in advertising. Peter Tsaklis was a proofreader in the advertising operations group, which is part of the operations management department. He transferred to the editorial department as a “news clerk” at the central desk in early 2004.

In the case of the other four transfers, Andreas testified that three individuals transferred

[\[33\]](#)

from the editorial department to the marketing and promotions department, and that one individual transferred from the central desk in the editorial department to the “systems” group in Vice President for Operations Turmel’s department several years ago. The record does not reveal, however, whether any of the four transferred from nonsupervisory positions in the editorial department. One of them, Daniel Griffin, transferred to the position of vice president of marketing and promotions, a supervisory position. The record does not reveal whether the other three transferred to rank and file or to supervisory positions in the other departments.

Centralization of Labor Relations

The employees in each department are separately supervised by supervisors in their departments who hire them, set their work schedules, discipline them, complete their evaluations, and recommend their wage increases. The human resources department and Franks must approve all job requisitions. The human resources department posts all job openings, screens job applicants, and writes job offer letters to the applicants selected by the departments. Vice President for Operations Turmel testified that he has the power to discipline employees, but that the departmental supervisors submit disciplinary action forms to human resources for review, and that human resources must be involved in all terminations. Vice President Wade testified with respect to discipline that he has ultimate authority to discipline and that human resources just helps with the forms. Human resources and Franks must also approve wage increases. Wade testified that he has ultimate authority with respect to evaluations and that human resources usually agrees with his position regarding raises. Turmel testified that human resources has rejected perhaps three out of six of his recommendations for compensation ranges due to a lack of lateral equity within the company.

Working Conditions

All unrepresented employees of the Employer are eligible for the same benefits, and the same employee handbook applies to all unrepresented employees. Some employees in the advertising department are paid by means of a combination of commissions and base pay, and the circulation department also pays incentives in some cases. The editorial department employees are not paid commissions. Employees from all departments share common computer systems, parking lots, breakrooms, and rest rooms, and use the same company-wide badge system.

ANALYSIS

The Board has stated that the optimum bargaining unit in the newspaper industry is one comprising employees in all “nonmechanical” departments, but that units of single major

[34]

departments are also appropriate. The Chicago Daily News; Minneapolis Star and Tribune

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Co.; The Bureau of National Affairs, Inc. In The Peoria Journal Star, Inc., the Board noted that it had merely pointed out in a prior case that a multi-department unit composed of all nonmechanical departments was the most desirable unit in the industry, but that it was not holding that such a unit is the only appropriate unit in every case. Rather, the appropriateness of a unit in a particular case turns not upon the ultimate desirability of the overall unit, but upon the facts of that case, including the bargaining history, the employer's organizational structure, and the willingness of a union to represent the overall unit, a factor which may be considered although it cannot be controlling. The Board approved a petitioned-for unit of news and editorial

[38]

department employees in Chicago Journal of Commerce, Inc., noting that there was no interchange between that department and the other departments and that, although all employees generally worked under similar conditions of employment, the duties and interests of the editorial and news department employees differed substantially from those of the other workers.

In cases where a union has sought to represent units composed of more than one, but less than all, nonmechanical departments, the Board has approved only separate departmental units. See, The

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Telegram Publishing Company and the Salt Lake Tribune Publishing Company (Board excluded the library promotion department from the union's petitioned-for unit of editorial and library-promotion department employees); Salt Lake Tribune Publishing Company and Telegram

[40]

Publishing Company (Board rejected petitioned-for single unit of news-editorial, community service, and circulation departments in favor of separate units for each department); The Peoria

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Journal Star, Inc. (petitioned-for combined unit of news-editorial and circulation departments is inappropriate, but separate departmental units are appropriate). In finding in favor of separate departments, the Board relied on the fact that the functions of the different departments were widely divergent, that the jobs in non-news departments did not require the same type of ability and training as that required for performing the primary functions of the news-editorial department, which is gathering, presenting, and interpreting news, that there was no common supervision below the level of the general manager in charge of all departments, and that there was no interchange or transfers between departments. Salt Lake Tribune Publishing Company

[42]

and Telegram Publishing Company. The Board found no merit to the contention that single-department units were rendered inappropriate because of functional integration and centralized control, because of interchangeability among employees, or because all employees receive the

[\[43\]](#)

same benefits and have similar conditions of employment. Peoria Journal Star, Inc.

I find here that the petitioned-for unit of editorial department employees is appropriate. The function of this department, gathering and editing news stories, is very different from the primary functions of the other departments, such as selling advertisements, distributing newspapers, marketing the newspapers, developing software, or repairing computers. The duties and qualifications of the reporters, photographers, and copy editors in the editorial department who gather and edit the news are unique. They are the only employees who are required to have a degree in journalism or a related field and they are the only employees subject to the code of ethics for journalists. There is no temporary interchange between editorial department employees and employees of any other department. There have been only three permanent transfers between

[\[44\]](#)

rank and file positions in the editorial department and other departments. Finally, the editorial department employees are separately supervised by various editors in their own department who report to a separate vice president.

While the Employer asserts that there is substantial interaction between the editorial department and the other nonmechanical departments, it appears that most of the inter-departmental contact occurs between supervisory or managerial personnel rather than between

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rank and file employees in the editorial department and other departments. I find that the degree of contact that does occur between rank and file employees is insufficient to mandate finding a broader unit appropriate. A few non-editorial department employees sometimes

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perform somewhat similar duties and/or share some similar qualifications with the editorial department employees, and there is one clerical employee who does work for both the accounting and editorial departments, but I find that the number of employees involved is too insubstantial to warrant a different result.

Finally, the cases cited by the Employer in support of its position are distinguishable. In

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The Evening News; The Valley News and Green Sheet; Garden Island Publishing Co.;

[\[50\]](#)[\[51\]](#)

and Chicago Daily News, Inc. the overall multi-department units approved by the Board were sought by the petitioning union. Here, no union seeks to represent employees in a broader

[\[52\]](#)

unit. In The Bureau of National Affairs, Inc., the union, which already represented a separate unit of editorial department employees, sought to represent a second unit comprised of all departments except the editorial department. In dismissing the petition, the Board adhered to its

basic position that it will generally approve only units consisting of employees of a single major department or units comprising employees of all nonmechanical departments. Here the Union seeks to represent employees in a single major department.

Accordingly, I conclude that the editorial department petitioned for by the Union is an appropriate unit and I will, therefore, direct an election in that unit.

CONFIDENTIAL STATUS OF THE ADMINISTRATIVE ASSISTANT TO THE EXECUTIVE EDITOR

The Employer seeks to exclude Administrative Assistant Leigh Higginbottom from any unit found appropriate as a confidential employee. Higginbottom assists Executive Editor Andreas and Senior Managing Editor Alan White. Andreas testified that Higginbottom screens and returns their phone calls, reviews and returns their E-mail messages, prepares documents, files, photocopies, and sends faxes. She opens all of Andreas' mail, which includes correspondence from the human resources department regarding personnel issues. Higginbottom thus has access to confidential communications regarding personnel issues that Andreas has with other department heads.

Higginbottom retrieves personnel files from human resources. She fills out and submits to human resources forms concerning raises. This personnel information is available to managers and editors, but not to rank and file employees. Andreas testified that Higginbottom is often made aware of personnel and managerial decisions that affect the editorial department as she may type memos concerning them. Finally, Andreas testified that if she has to prepare proposals for collective bargaining, Higginbottom would type them.

A confidential employee is one who assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations.

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NLRB v. Rural Electric Corp.; and B.F. Goodrich Co. The Board contemplates that a confidential employee is involved in a "close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it." Intermountain Electric

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Assn. In addition, the Board has developed the alternative test that employees who have regular access to confidential information concerning the anticipated changes that may result from collective bargaining negotiations may be confidential employees. Crest Mark Packing Co.

[\[56\]](#)

The party asserting confidential status has the burden of proving its assertion.

[57]

Intermountain Electric Assn.

I find that Higginbottom is not a confidential employee and shall include her in the unit. First, the Employer has failed to present any evidence that either Andreas or White play any role in formulating, determining, and effectuating the Employer's labor relations policies. Moreover, even assuming that they effectuate such policies, that is not enough; they must formulate and

[58]

determine such policies in a meaningful way. Waste Management De Puerto Rico. See also

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Rhode Island Hospital, in which the Board explained that the fact that departmental directors and high-ranking administrators were responsible for effectuating labor policy by handling grievances, writing performance appraisals, implementing a performance award system, and issuing discipline was insufficient to establish that they formulate or determine their employer's labor policy.

Second, even assuming that Andreas and White formulate and determine the Employer's labor policies, the Employer has failed to demonstrate that Higginbottom acts in a confidential capacity to them. It is well established that mere access to files containing confidential information about personnel matters or the typing of memos concerning personnel decisions does

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not establish confidential status. Associated Day Care Services of Metropolitan Boston;

[61]

[62]

Lincoln Park Nursing and Convalescent Home, Inc.; and Rhode Island Hospital. Typing memos concerning "managerial decisions" that affect the department does not confer confidential status in the absence of evidence that these managerial decisions concern labor relations matters. Finally, Andreas' contention that if she, Andreas, has to prepare proposals for collective bargaining, Higginbottom will type them, is speculative and thus insufficient to demonstrate confidential status. At the outset, there is no evidence that the Employer has actually designated Andreas to be its representative in contract negotiations should the Union be certified. Even assuming, however, that Andreas becomes the Employer's representative in negotiations, Higginbottom is not presently performing any duties which would cause her to be excluded as a confidential employee. The Board has declined to find confidential status in such circumstances, holding that the parties may reconsider the status of such individuals if and when the

[63]

circumstances actually arise. American Radiator & Standard Sanitary Corp.; KOWB Radio;

[64]

[65]

and ITT Grinnell.

Accordingly, I find that Higginbottom is not a confidential employee and, therefore, I

shall include her in the unit found appropriate.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees in the Editorial Department, including reporters, photographers, editorial assistants, copy editors, paginators, copy editor/paginators, copy desk clerks, page designers, and graphics designers employed at its facilities in North Andover, Andover, Beverly, Newburyport, Gloucester, and Haverhill, Massachusetts and in Derry and Kingston, New Hampshire, but excluding confidential employees, managers, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by The Newspaper Guild of Greater Boston, TNG-CWA, No. 31032.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior

[66]

[67]

Underwear, Inc.; NLRB v. Wyman-Gordon Co. Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon

[68]

Health Care Facility. In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before December 16, 2005. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 23, 2005. You may also file the request for review electronically. Further guidance may be found under E-Gov on the National Labor Relations Board web site: www.nlrb.gov.

/s/ Elizabeth A. Gemperline

Elizabeth A. Gemperline, Acting Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 9th day of December, 2005.

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[1]

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

[2]

The Union originally petitioned to represent Editorial Department employees at only three of the Employer's several locations. During the course of the hearing, the Union amended its petition to include Editorial Department employees company-wide.

[3]

The Employer would exclude the employees in its composing and pressroom departments, who are already represented by other unions.

[4]

The Employer employs about 700 employees. There are approximately 145 employees in the petitioned-for unit of editorial department employees. There are approximately 525 employees in the overall unit sought by the Employer.

[5]

Although some editorial department employees appear to work primarily for one of the Employer's ten publications, the ten publications routinely share stories.

[6]

The parties have stipulated and I find, that Publisher and President Richard Franks, Vice President for News/Editor in Chief William Ketter, Executive Editor Karen Andreas, Vice President for Finance/CFO Ronald Pollina, Vice President for Advertising Dennis Wade, Vice President for Circulation Steven Milone, Vice President for Operations Dennis Turmel, Vice President for Plant Facilities Dana Scholtz, Vice President for Business Systems John Gregory, Vice President for Marketing and Promotions Daniel Griffin, Vice President for Weekly Papers Ellen Zappala, Vice President/General Manager for the Essex County News Vincent Cottone, and Vice President for Human Resources Ann Marie Borgesi are statutory supervisors and/or managerial employees who should be excluded from any unit found appropriate.

[7]

The parties have stipulated, and I find, that individuals who hold the following positions in the editorial

department are statutory supervisors and/or managers who should be excluded from any unit found appropriate: executive sports editor, assistant sports editor, sports editor, features editor, assistant features editor, senior managing editor, Sunday editor, business editor, assistant business editor, metro editor, assistant metro editor, photo editor, night editor, New Hampshire editor, assistant New Hampshire editor, managing editor, editor, city editor, senior news editor, production editor, news editor, assistant sports editor/production, production editor, editorial page director, associate editorial page director, editorial page editor, New Hampshire editorial page editor, design editor, and publisher/editor.

[8]

The duties and qualifications for the various editorial department positions are set forth in job postings that were introduced into evidence.

[9]

One editorial assistant works in the editorial page group, but the record does not reveal what her duties are.

[10]

The Employer plans to eventually have all of the weekend newspapers edited by the central desk in North Andover, but has not yet made this transition.

[11]

Quark is a computer software system for designing newspaper pages.

[12]

The parties have stipulated, and I find, that the director of outside classified, director of inside classified, weekly division director, majors director, local advertising director, creative services supervisor, and those other individuals in the advertising department who possess the titles of supervisor or manager are statutory supervisors and/or managers who should be excluded from any unit found appropriate.

[13]

For example, he may take a photo of a local auto dealer who has won an award from an auto manufacturer. The newspaper does this in furtherance of client loyalty.

[14]

As noted above, neither party seeks to include employees in the composing or press departments, as they are already represented, and neither party seeks to include employees in the packaging center. The packaging center adds advertising circulars and flyers to the newspapers and assembles them for the distribution group. It employs machine operators, material handlers, receivers, drivers, and a mechanic.

[15]

Turnel is the third or fourth level supervisor for the ad operations employees whom the Employer proposes to include in the unit. The parties have stipulated, and I find, that the individuals holding the

following titles in operations management and ad operations should be excluded from any unit found appropriate as statutory supervisors and/or managers: operations director, administrative assistant, ad operations manager, assistant ad operations manager, night APS supervisor, Saturday supervisor, and ad operations coordinator.

[\[16\]](#)

The parties have stipulated, and I find, that the individuals who hold the following titles are statutory supervisors and/or managers who should be excluded from any unit found appropriate: director of internet operations, director of research and development, and director of information technology services.

[\[17\]](#)

Turmel testified that some of the work performed by the digital imaging group had previously been performed by the composing department. The ITU, which represents, the composing department employees, was not present at the hearing and the record is silent as to whether or not the ITU has any interest in representing these employees. In view of my finding that a separate editorial department unit is appropriate, however, that question is irrelevant to my determination.

[\[18\]](#)

A job posting for a digital imaging operator position does not mention a degree requirement.

[\[19\]](#)

Neither party seeks to include employees in the distribution group, who are mostly drivers and mechanics.

[\[20\]](#)

The parties have stipulated, and I find, that individuals with the following titles shall be excluded from any unit found appropriate as statutory supervisors and/or managers: assistant to the vice president for circulation, circulation operations manager, sales and marketing manager, distribution manager, assistant circulation operations manager, single copy manager, home delivery manager, circulation manager, AT & HG HD mgr, customer service manager, telemarketing manager, promotions manager, outside sales manager, NIE manager, CSR supervisor, CSR administrative supervisor, retention manager, and Gloucester HD manager.

[\[21\]](#)

The Employer maintains that the carriers are independent contractors, and neither party seeks to include them in the unit.

[\[22\]](#)

Andreas testified that the newspaper in education “department,” which is in the circulation sales and marketing group, writes stories for children to read in classrooms. The only person in this “department,” however, NIE Manager Pauline Minch, has been excluded from the unit as a statutory supervisor and/or manager.

[23]

There was no testimony by anyone in the finance and business, marketing and promotions, business systems, plant facilities, or human resources departments, nor was an organizational chart for these departments introduced into evidence. It is not clear from the record or from the Employer's post-hearing brief precisely what job titles in these departments it seeks to include in the unit and which individuals below the vice presidents, if any, should be excluded as statutory supervisors and/or managers.

[24]

Turmel testified that no one in the ad operations group other than the two product layout clerks interacts with rank and file editorial department employees.

[25]

She was referring, presumably, to sales consultants in the advertising department.

[26]

Wilkinson has been excluded from the Employer's proposed unit as a statutory supervisor and/or manager.

[27]

As noted above, Koltz has been excluded from the unit as a statutory supervisor and/or manager.

[28]

This was presumably Ouellette, who, as noted above, has been excluded from the unit as a statutory supervisor and/or manager.

[29]

The record does not reveal who in the marketing department would do this.

[30]

The Employer's witnesses testified about several other task forces and committees that have had representation from several departments, including a New Hampshire task force, a Sunday task force, a zoning task force, a committee that coordinated a campaign for the Trustees of Reservations (which group preserves the cultural and scenic treasures of Massachusetts), and a committee that coordinated an effort to promote the 125th anniversary of the Salem News. The record does not reveal whether any of the departmental representatives to these groups are rank and file employees. The editorial department's representatives on the New Hampshire task force are supervisors and managers.

[31]

It appears, although it is not clear from the record, that the accounting department in which Calzetta works is part of the finance department.

[32]

Hudson had started in a job in the circulation department, although the record does not reveal what it

was, and then transferred to his job as a reporter in the editorial department.

[\[33\]](#)

One transfer took place three to four years ago. The record does not reveal how long ago the others transferred to the marketing and promotions department.

[\[34\]](#)

98 NLRB 1235, 1237 (1952).

[\[35\]](#)

222 NLRB 342, 343 (1976).

[\[36\]](#)

96 NLRB 673, 675 (1951).

[\[37\]](#)

117 NLRB 708, fn. 1 (1957).

[\[38\]](#)

73 NLRB 1213 (1947).

[\[39\]](#)

41 NLRB 662 (1942).

[\[40\]](#)

92 NLRB 1411 (1951).

[\[41\]](#)

Supra.

[\[42\]](#)

Supra at 1412.

[\[43\]](#)

Supra at 709 fn. 2.

[\[44\]](#)

I note that two of these transfers occurred when the function of writing obituaries was transferred from the editorial to the advertising department, a circumstance that is unlikely to reoccur.

[\[45\]](#)

In several instances it was unclear from the testimony whether it is supervisory or rank and file employees who are involved in the types of interaction described. This type of testimony is insufficient to

demonstrate work-related contact between rank and file employees.

[46]

In this regard, the three obituary coordinators write obituaries, although I note that writing obituaries involves formulaic writing, unlike the type of writing performed by reporters writing a news story. Some of the marketing and promotions employees write stories for special sections, the ad technician/page designer at the Carriage Towne News writes headlines and does pagination, and one sales consultant in the advertising department occasionally takes photographs of clients and submits them for publication. Finally, the advertising department has one graphic artist, and the editorial department has two graphic designers, who presumably perform somewhat similar functions.

[47]

Copy editors and paginators in the editorial department, as well as ad technicians, web coordinators, and digital imaging operators in other departments, use the Quark software. The web coordinators and digital imaging operators also use the same Photoshop software used by the paginators and graphic designers in the editorial department.

[48]

308 NLRB 563 (1992).

[49]

223 NLRB 455 (1976).

[50]

154 NLRB 697 (1965).

[51]

98 NLRB 1235 (1952). In this case, the petitioning union sought to add nonmechanical employees from other departments to an existing unit of editorial and news department employees, and the Board approved the overall unit sought. While the inclusion of some classifications was in dispute, it appears that both parties agreed to the appropriateness of an overall unit.

[52]

Supra.

[53]

454 U.S. 170 (1981).

[54]

115 NLRB 722, 724 (1956).

[55]

277 NLRB 1 (1985).

[56]

283 NLRB 999 (1987).

[57]

Supra.

[58]

339 NLRB 262, ALJD at 282 (2003).

[59]

313 NLRB 343, 351 (1993).

[60]

269 NLRB 178, 180-181 (1984).

[61]

318 NLRB 1160, 1164 (1995).

[62]

Supra, 313 NLRB at 350-351.

[63]

119 NLRB 1715, 1719 (1958).

[64]

222 NLRB 530 (1976).

[65]

253 NLRB 584586 (1980).

[66]

156 NLRB 1236 (1966).

[67]

394 U.S. 759 (1969).

[68]

315 NLRB 359 (1994).